

**OPINION  
45-166**

June 13, 1945            (OPINION)

**IMPEACHMENT**

**RE: Lieutenant Governor - Per Diem**

This is in reply to your request for the opinion of this office as to whether or not the lieutenant governor, while presiding at the impeachment trial of Oscar E. Erickson, is entitled to and may receive the expenses and per diem provided for in Senate Bill 211 of the 1945 legislative session, the same being Chapter 262 of the Session Laws of 1945.

The title of the act in question is as follows:

**"COURT OF IMPEACHMENT, COMPENSATION**

An Act amending and re-enacting section 44-0926 of the North Dakota Revised Code of 1943, providing for compensation of members of the senate, the house of representatives, officers and employees and the method of payment in impeachment proceedings, repealing all acts or parts of acts in conflict herewith, and declaring an emergency."

Section 1 so far as the same is applicable to the question propounded reads as follows: "The presiding officer, except the chief justice when presiding and members of the senate, while sitting as a court of impeachment, and members of the house of representatives, each shall receive his regular per diem and mileage, plus five dollars (\$5.00) per day as reimbursement for expenses, while attending the court of impeachment. \* \* \*"

We call your attention to the sentence, "The presiding officer, except the chief justice when presiding, \* \* \* shall receive his regular per diem and mileage \* \* \*." The members of the legislature knew when they passed this bill with an emergency that the lieutenant governor would be the presiding officer at the impeachment proceedings, and the language used therefor clearly implies that the presiding officer is entitled to the remuneration provided for in said act.

There is no constitutional limitation upon compensation of expenses that may be paid to and received by the lieutenant governor. It is true that section 54-0803 of the North Dakota Revised Code of 1943 fixes the salary of the lieutenant governor at one thousand dollars for all services performed by him, and the presumption is that the members of the legislature were fully aware of that provision. Notwithstanding such provision, they enacted chapter 262 supra which specifically provides that the presiding officer shall receive the per diem and remuneration for expenses therein provided.

It is the opinion of this office, therefore, that the lieutenant governor is entitled to and may receive the per diem and compensation for expenses as provided in chapter 262, Session Laws of 1945.

It should be observed that this Act was passed with an emergency and became effective March 13, 1945.

NELS G. JOHNSON

Attorney General